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423379—57

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 859

UNION PACIFIC RAILROAD COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Claims (Pet. App. 1a–6a) is reported at 147 F. Supp. 483.

JURISDICTION

The judgment of the Court of Claims was entered on January 16, 1957 (Pet. App. 9a). The petition for a writ of certiorari was filed on March 26, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

In 1943 and 1944 the carrier performed certain transportation services for the Commodity Credit Corporation. In computing its charges, the carrier

failed to give Commodity the benefit of land-grant rates to which it was concededly entitled. Pursuant to Section 322 of the Transportation Act of 1940, the Government promptly paid the bills as presented. The overcharges were discovered on post audit and were refunded in 1953 by the carrier upon the Government's request. The carrier thereafter brought suit under the Tucker Act to recover the refund.

The question presented is whether the Government's retention of the administrative refund of the overcharges is precluded by the provision in Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948, as amended, requiring that suit on claims by or against Commodity be brought within six years following the accrual of the claim.

STATUTES INVOLVED

Section 322 of the Transportation Act of September 18, 1940, 54 Stat. 955, 49 U. S. C. 66, provides as follows:

> Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is reserved to the United States Government to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier.

Section 4 of the Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070, as

amended, 15 U. S. C. 714b, provides in relevant part as follows:

> The Corporation—
>
> * * * * *
>
> (c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property.* * * No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought,* * *. The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided,* That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit.* * * Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of subsection (c) of this section to the same extent as though such suit were by or against the Corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in section 1491 of Title 28, may be brought in the United States Court of Claims,* * *.
>
> * * * * *

(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers.

STATEMENT

This action was instituted by petitioner, Union Pacific Railroad Company, under the Tucker Act to recover certain refunds of overcharges in connection with transportation services rendered to the Commodity Credit Corporation. The single asserted basis of recovery was that, at the time the refunds were made, the Government's right administratively to recoup the overcharges was barred by the limitation provisions of Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948, *supra,* pp. 2–3. The court below held Section 4 (c) inapplicable and dismissed the action. The pertinent facts may be summarized as follows:

During 1942 and 1943, petitioner and its connecting carriers transported certain food shipments under bills of lading issued by the Commodity Credit Corporation (Pet. App. 6a). Following the rendition of these services, petitioner, as the terminal carrier, submitted bills in the total amount of $7,805.87 (Pet. App. 6a, 7a). Pursuant to Section 322 of the Transportation Act of 1940, *supra,* p. 2, these bills were paid as submitted, without a prior determination as to their correctness (Pet. App. 6a). Subsequently, the post-audit by the General Accounting Office disclosed that petitioner had overcharged the Government by failing to apply land-grant rates to which Commodity had been entitled (Pet. App. 7a).

In April 1953, the General Accounting Office requested a refund of the overpayments and advised petitioner that, unless restitution was made within 60 days, the Government would make deductions in the payment of other bills rendered by the carrier, in conformity with Section 322 (Pet. App. 7a). In June 1953, petitioner refunded $3,697.78 (the amount of the overcharges) (Pet. App. 7a).

On August 20, 1953, petitioner brought this action. In its complaint, petitioner did not allege that its bills, paid without prior audit under Section 322, were correct. To the contrary, petitioner's position was that, although it had overcharged the Government, it was nevertheless entitled to recover its refund. Its theory was that, because the completion of the audit of its excessive bills and the resultant request for refund did not take place until more than six years after the bills had been paid, Section 4 (c) of the Commodity Credit Corporation Charter Act, *supra,* pp. 2–3, barred receipt of restitution by the Government.

On January 16, 1957, the Court of Claims rejected petitioner's position and dismissed the action (Pet. App. 1a–6a). Speaking for a unanimous court, Judge Madden recognized at the outset (1) that the refund, following the disclosure of overcharges on the post-audit of petitioner's bills, was an integral part of the administrative settlement procedure contemplated by Section 322 of the Transportation Act; (2) that Section 322 establishes no time limitation with respect to recoupment of excessive charges; and (3) that, in view of the provision of the Section requiring payment of transportation bills upon presentation, the Govern-

ment would be in a disadvantageous position were it denied the right of administrative recoupment unless the audit were completed within six years (Pet. App. 2a, 4a). In the latter connection, the court pointed to the obvious benefit that carriers derive from prompt payment of their bills without audit, as well as to the fact that the post-audit contemplated by Section 322 may require more than six years (Pet. App. 3a–4a).

Turning then to the question as to whether, in circumstances where the transportation services involved had been rendered on behalf of Commodity, Section 4 (c) of the Charter Act nevertheless imposed a limitation on the administrative recoupment contemplated by Section 322, the court determined the answer to be in the negative (Pet. App. 5a). The court noted that Section 4 (k) of the Charter Act, *supra,* p. 4, which relates to the settlement and adjustment of claims by or against Commodity, does not place a time limit on such action, and that, as a matter of policy, Commodity settles, adjusts, and pays claims against it filed within ten years after accrual (Pet. App. 4a). The court further noted that, while the Tucker Act imposes a six-year limitation with respect to the institution of suit on claims against the United States (28 U. S. C. 2501), the claimant has ten years in which to file his claim with the General Accounting Office (31 U. S. C. 71a, 237). The court took these provisions to mean that the General Accounting Office and Commodity are under a legislative mandate to consider and pay meritorious claims administratively, even though suit thereon would be time-barred (Pet. App. 4a–5a). This being so, the court reasoned,

Congress could not have intended that, at the same time, Commodity was not to avail itself of established administrative procedures with respect to obtaining payment on its own claims which likewise could not have been sued upon (Pet. App. 5a).

On the basis of these considerations, the court concluded that (Pet. App. 5a):

> * * * Congress did not, by section 4 (c) mean more than it said, which was that no suit could be brought upon claims more than six years old. We think it did not intend to disturb the normal processes of administrative settlement, particularly the one expressly established by section 322 of the Transportation Act of 1940. There would be no equity whatever in an arrangement whereby a railroad, if it had a claim against the Government of a kind which had not, under the mandate of section [322], been paid upon presentation, and more than six years had elapsed since its accrual, would have a right to have its claim considered on its merits by the General Accounting Office within ten years, but that office would have no right to set off a claim of the CCC, time-barred from suit by section 4 (c) of the Charter Act.

ARGUMENT

By this action, petitioner seeks to recover sums which it refunded to the Government under Section 322 of the Transportation Act of 1940, *supra,* p 2, after a post-payment audit of its bills for transportation services rendered to the Commodity Credit Corporation revealed overcharges. Petitioner does not contest that these bills were excessive, asserting merely

that administrative recoupment of the overcharges was barred by limitations. The holding of the court below to the contrary is clearly correct and does not conflict with prior decisions of this or other courts. Accordingly, further review is not warranted.

1. Prior to 1940, payment of transportation bills was not made until their correctness was established. This practice—which is still followed as to all non-carrier claimants—frequently resulted in substantial delay in payment. In 1940, Section 322 was enacted to provide for payment of transportation bills without delay, *i. e.*, "prior to audit or settlement by the General Accounting Office." However, in order to insure that if post-audit revealed an overcharge, the Government would be able to put itself in the same position that it would have occupied had it discovered the error by a pre-audit, Section 322 went on to reserve to the Government "the right * * * to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier."

Thus, Section 322 was designed, on the one hand, to give the carrier the benefit of immediate payment, and, on the other, to enable the Government to put itself in *statu quo ante* with respect to those matters as to which subsequent audit showed error or probability of error. Cf. *United States* v. *Western Pacific Co.*, 352 U. S. 59, 74. This desire to insure that the prompt payment of transportation bills would not have a prejudicial effect upon the public treasury sufficiently explains, we think, the absence of a limitations provision in Section 322. As the court below observed, were administrative recoupment barred unless effectu-

ated during the period for which petitioner here contends, the Government would be unable to protect itself effectively against the retention by the carrier of excessive and unlawful charges. Cf. *United States* v. *Western Pacific R. Co., supra* at 74, fn. 17.

2. Petitioner urges that, even though there is no limitation upon administrative recoupment of overcharges under Section 322, Section 4 (c) of the Commodity Credit Corporation Charter Act, *supra,* pp. 2–3, imposes a six year time limit upon such recoupment where the transportation services had been performed for Commodity. While tacitly conceding that Section 4 (c) in terms refers solely to *suits* by or against Commodity (or the United States as the real party in interest), petitioner insists that the Section must be read as also encompassing administrative settlements.

It is axiomatic that "[s]tatutes of limitations sought to be applied to bar rights of the Government, must receive a strict construction in favor of the Government." *DuPont de Nemours & Co.* v. *Davis,* 264 U. S. 456, 462, and cases cited therein. Even apart from this consideration, however, petitioner's endeavor to broaden the scope of Section 4 (c) beyond the Congressional terms is unjustified. As the court below observed (Pet. App. 4a), Congress in Section 4 (k) of the Charter Act, *supra,* p. 4, conferred authority on Commodity "to make final and conclusive settlement and adjustment of any claims by or against [it]." Section 4 (k), in contrast to Section 4 (c), contains no limitations period and has been administratively construed as permitting payment of claims filed against

Commodity even after Section 4 (c)'s time bar has run. See *e. g.*, 41 Op. Atty. Gen. No. 15.

That Congress does not consider the term "suit" to embrace administrative settlement and adjustment is further demonstrated by the enactments relating to contractual claims against the Government generally. Suit on such a claim must under the Tucker Act be brought within six years of the accrual of the cause of action. 28 U. S. C. 2501. Administrative allowance, however, is permitted for four additional years, *i. e.*, if the claim is filed within ten years of its accrual. 31 U. S. C. 71a, 237.[1]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1957.

[1] Petitioner's reliance (Pet. p. 7) on *United States* v. *Lindsay*, 346 U. S. 568, is entirely misplaced. The single question there was whether Section 4 (c) barred the institution of *suit* by the Government on a Commodity claim more than six years after the accrual of the cause of action, but less than six years from the effective date of the Charter Act. In holding in the affirmative, this Court did not consider, let alone decide, the question here involved. Further, unlike this case, the Commodity claim in *Lindsay* was not grounded upon the submission to Commodity of an excessive bill, and the payment of that bill upon presentation.

U. S. GOVERNMENT PRINTING OFFICE: 1957